

Applicant : Christopher Lynn Tycho Brown
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Attorney's Docket No.: 16666-002001

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REMARKS

Claims 1-5 and 7-36 are pending, with claims 1, 12, 17, 24, and 36 being independent.

Claims 1, 3, 12, 17, and 36 have been amended. No new matter has been added.

Reconsideration and allowance of the above-referenced application are respectfully requested.

Rejection Under 35 U.S.C. § 112:

Claims 1, 4, 7, 10, 12, 15, 18, 20, 21, and 24-27 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. This contention is respectfully traversed.

Claims 1, 4, 7, and 12 are objected to for allegedly failing to provide sufficient antecedent basis for the phrase, "the storage area protection". However, these claims are definite as written because "the storage area protection" corresponds to "a protected area". Nonetheless, in order to expedite prosecution, claims 1 and 12 have been amended to make the antecedent basis for "the storage area protection" more clear. Thus, withdrawal of this objection is respectfully requested.

Claims 1, 12, 20, and 21 are objected to for allegedly failing to provide sufficient antecedent basis for the phrase, "the formerly protected storage area". However, these claims are definite as written because "the formerly protected storage area" is clearly the result of removing "the storage area protection". Nonetheless, in order to expedite prosecution, claims 1, 12, and 17 have been amended to make the antecedent basis for "the formerly protected storage area" more clear. Thus, withdrawal of this objection is respectfully requested.

Claim 10 is objected to for allegedly failing to provide sufficient antecedent basis for, "the information". Antecedent basis for this feature can be found in line 10 of claim 1:

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"providing information derived from the formerly protected storage area to a data processing system detection tool;" (emphasis added). Thus, withdrawal of this objection is respectfully requested.

Claim 12 is objected to for allegedly failing to provide sufficient antecedent basis for, "the information". Antecedent basis for this feature can be found in line 10 of claim 12: "providing information derived from the formerly protected storage area to a data processing system detection tool;" (emphasis added). Thus, withdrawal of this objection is respectfully requested.

Claims 24-27 are objected to for allegedly failing to provide sufficient antecedent basis for, "the detection tool". Antecedent basis for this feature can be found in line 2 of claim 24: "a data processing system detection tool;" (emphasis added). Thus, withdrawal of this objection is respectfully requested.

Claim 25 is objected to for allegedly failing to provide sufficient antecedent basis for, "the system". Antecedent basis for this feature can be found in line 1 of claim 24: "A system comprising;" (emphasis added). Thus, withdrawal of this objection is respectfully requested.

Claim 27 is objected to for allegedly failing to provide sufficient antecedent basis for, "the detection agent". Antecedent basis for this feature can be found in line 1 of claim 27: "The system of claim 24, further comprising a detection agent operable to send information to the detection tool, the detection agent being operable to load the kernel-mode software module in the data processing system and communicate with the loaded kernel-mode software module and with

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the detection tool.” (emphasis added). Thus, withdrawal of this objection is respectfully requested.

Claim 15 is objected to for allegedly not being clear with respect to the phrase, “the packet structure allows for only a one-to-one connection.” However, this phrase is clear by its plain meaning. Claim 12 recites, “sending the information in packets having a packet structure useable over both the peripheral device interface medium and the network communications medium.” Thus, claim 15 is clearly specifying that a connection formed between the sender and recipient of the packets is limited to a one-to-one connection, as opposed to a one-to-many connection. This terminology is clear to one skilled in the art of packet based communications. Moreover, as described in the specification, “The packet structure can allow a strictly one-to-one connection to be specified to increase communications security (i.e., the server agent may be limited to communicating with only one client at a time).” (See Specification at ¶36.) Thus, claim 15 definite as written, and withdrawal of this objection is respectfully requested.

Claim 18 is objected to for allegedly not being clear with respect to the phrase, “without altering the storage device.” The Office asks whether this means “without altering content of storage device or without altering configuration of storage device (i.e., protection area)?” (See Office Action at page 4.) However, by its plain meaning, the phrase “without altering the storage device” clearly means both; neither the content of the storage device nor the configuration of the storage device are altered when the kernel-mode software module is run and dynamically loaded according to the subject matter of claim 18. Thus, claim 18 definite as written, and withdrawal of this objection is respectfully requested..

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For all of the above reasons, withdrawal of the rejections under 35 U.S.C. § 112 is respectfully requested.

Rejection Under 35 U.S.C. § 101:

Claim 1-16 and 18 stand rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. This contention is respectfully traversed.

The Office has expressed concern regarding the definition of "a machine readable medium" in ¶ 18. To alleviate this concern, ¶ 18 has been amended to clarify that "a machine readable medium", as used in the present application, does not include software and program products not embodied in a computer readable medium. In view of the clarifying amendment, withdrawal of the rejection under 35 U.S.C. § 101 is respectfully requested.

Rejection Under 35 U.S.C. § 102:

Claims 1-2, 4-5, 7-8, and 17-20 stand rejected under 35 U.S.C. § 102(b) based upon an alleged public use or sale of the invention. This contention is respectfully traversed.

A declaration by Christopher Lynn Tycho Brown under 37 C.F.R. § 1.132 accompanies the present response. In view of the declaration, Applicants respectfully request that the rejection under 35 U.S.C. § 102(b), be withdrawn.

Claims 1-5, 8-10, 17, and 20-21 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Stevens (U.S. 2002/0133702 A1), with Assaf (US 6,728,830 B1), Moore:

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(US 2004/0003135 A1), definition of Hardware Abstraction Layer (HAL) from <http://en.wikipedia.org> and Document from MSDN Library, and Debugging Terminology included as supporting documents. This contention is respectfully traversed.

Stevens describes methods for granting access to a protected area, such as a hard disk drive of a computer, after the computer has been booted, by introducing BIOS (Basic Input/Output System) modules that may be accessed after the computer is in normal operation. (See e.g., Stevens at ¶s 8-9, 19, 45-46, 48-49, and 53.) Furthermore, Stevens teaches that a calling process can access the protected area 27 by locating and using an interface of the system firmware. (See e.g., Stevens at ¶ 64; emphasis added.) This system firmware (i.e., the BIOS) is not equivalent to a kernel mode software module, as suggested by the Office.

The present application makes this distinction clear: "The data processing system 200 can be generally divided into four layers: hardware, firmware, kernel mode, and user mode." (See Specification at ¶ 19; emphasis added; and FIG. 2.) The supporting documents provided by the Office also provide evidence of the clear distinction between the BIOS and the kernel mode of the operating system that includes a hardware abstraction layer. (See e.g., Assaf at col. 5, lines 10-25; and http://en.wikipedia.org/wiki/Operating_System.) Moreover, the present application also makes clear that the BIOS and the operating system (OS) are distinct components. (See Specification at ¶ 21.) Thus, Stevens' reference to an interface of the system firmware is not the same as use of a kernel mode software module, as suggested by the Office.

Independent claim 1 now recites, "determining whether a storage device, in a data processing system running an operating system, includes storage area protection, the operating

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system including a hardware abstraction layer; removing the storage area protection of the storage device from within the running operating system and without rebooting the data processing system, thereby creating a formerly protected storage area; and providing information derived from the formerly protected storage area to a data processing system detection tool; wherein said determining and said removing occur in a kernel mode of the data processing system." (Emphasis added.) As described in a detailed example in the specification:

The OS 220 can include a kernel that handles memory management, process and task management, and disk management. [...]

To assist law enforcement and information security personnel in determining if a user has utilized the protected area 212 to hide contraband or malware, a kernel-mode software module 230 can be used to provide access to the protected area 212 and enable live imaging and analysis of the protected area 212 from within the running operating system 220 and without rebooting the data processing system 200. [...]

The kernel-mode software module 230 can be a device driver (e.g., a Windows Driver Model (WDM) driver). The software module 230 can be loaded into memory by a detection application 240, and the software module 230 can provide a detection tool with access to the protected area 212. [...]

Thus, the software module 230 and the detection application 240 can provide direct and live access to the protected storage area 212 in order to image or analyze the protected storage area 212 in support of some detection function. The software module 230 and the detection application 240 enable direct access to the protected storage area live from the high level operating system without the need to reboot. In effect, the kernel-mode software module 230 operates as a broker for the detection application 240, providing direct hardware access to the user-mode application despite the hardware abstraction layer 222. Moreover, the

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removal of the protected storage area 212 (i.e., the removal of the protection) can be done volatily so the protection can be restored by the next system reboot, leaving the storage device 210 unaltered.

(See Specification at ¶s 19, 21, 22, and 23; and Fig. 2.)

Thus, the presently claimed subject matter enables direct and live access to the protected storage area of a previously unknown computer, without requiring a reboot. In stark contrast, the relevant BIOS modules in Stevens are stored in the protected area 27 before booting of the computer. (See e.g., Stevens at ¶ 49.) In other words, the presently claimed subject matter enables the following order of events to occur: (1) computer is booted up; (2) computer is compromised and is still running; (3) detection component(s) are loaded on the computer; and (4) storage area protection is removed and information derived from the formerly protected storage area is obtained. In contrast, Stevens must first load the relevant BIOS modules before the computer is booted up, and before the computer is compromised, in order to work.

For all of the above reasons, independent claim 1 should be in condition for allowance. Dependent claims 2-5, and 8-10 should be patentable based on the above arguments and the additional recitations they contain. For example, claim 10 recites, "wherein the operations further comprise reconstructing a file system of the formerly protected storage area to derive the information." (Emphasis added.) The Office contends that ¶ 84 of Stevens describes this subject matter, stating, "Stevens teaches recovery of the drive (paragraph [0084])." (See Office Action at page 9.) However, Stevens merely indicates in this section that diagnostic and recovery applications placed in the PARTIES (Protected Area Run-Time Interface Extensions Services)

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area can be used to determine whether a physical defect of the hard drive is the cause of a boot failure:

The present invention may be used for system diagnosis and recovery. A large percentage of hard drives returned to OEMs have no physical defect. The user may have been infected with a virus that deleted a critical file, or is suffering from a failed install. These events can result in a drive returned to the system vendor. The PARTIES area provides a safe area to place diagnostic and recovery applications. In the event of a boot failure, the user can start the diagnosis and recovery services. In the event of a technical support call, a technician could ask the user to initiate the system diagnostics. This capability will lead to fewer disk drive returns.

(See e.g., Stevens at ¶s 84.) Nothing here suggests that the diagnosis and recovery services may also include an application to reconstruct a file system of a formerly protected storage area to derive information that is sent to a data processing system detection tool. Thus, claim 10 should be patentable for at least this additional reason.

While independent claim 17 has a different scope than independent claim 1, claim 17 should nonetheless be patentable for similar reasons. In particular, Stevens does not describe, "loading a kernel-mode software module in a computing system running an operating system; and without rebooting the computing system, using the kernel-mode software module to perform operations from within the operating system, the operations comprising determining whether a storage device in the computing system includes storage area protection, and reversibly removing the storage area protection, thereby creating a formerly protected storage area." (Emphasis added.) Thus, independent claim 17 should also be in condition for allowance.

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Dependent claims 20-21 should be patentable based on the above arguments and the additional recitations they contain.

Claims 24, 26, 27, 29, and 32-35 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Adelstein et al (US 2004/0260733 A1), with Shoji et al. (US 2004/0216141 A1) and Moore (US 2004/0003135 A1) included as evidential references. This contention is respectfully traversed.

Independent claim 24 recites, "a data processing system detection tool; and a kernel-mode software module operable to provide the detection tool with access to a protected area of a storage device in a data processing system when the kernel-mode software module is loaded into the data processing system." (Emphasis added.) The Office mistakenly equates Adelstein's reference to "data not normally visible via the operating system" with a host protected area of a disk. (See Office Action at page 10.) However, the cited portion of Adelstein makes clear that this is not the case:

In one embodiment, forensic device 12 may acquire an "image" of one or more disks attached to target computing device 16 remotely via the communication link between forensic device 12 and target computing device 16. The image is an exact copy ("bitstream copy" or "mirror") of all data on the disks, including data not normally visible via the operating system of target computing device 16. In addition, the image may also include an exact copy of memory (RAM) or memory swap space of target computing device 16. The image may be acquired by using software on target computing device 16 that performs a direct low-level read of the disks and/or memory of target computing device 16, then communicating the image to forensic device 12 via SMB or the like. Target

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computing device 16 continues to operate while forensic device 12 acquires the disk image, memory image, or both.

(See e.g., Adelstein at ¶ 65; emphasis added.) Those skilled in the art would understand from this description that Adelstein is referring to unallocated disk space, not a protected area of the disk.

Thus, Adelstein does not describe the subject matter of independent claim 24, and claim 24 should be in condition for allowance. Dependent claims 26, 27, 29, and 32-35 should be patentable based on the above arguments and the additional recitations they contain.

Rejections Under 35 U.S.C. § 103:

Claim 7 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Stevens as applied to claims 1-5, and further in view of Rothman et al (US 2004/0158698 A1). Claim 7 depends from independent claim 1, which is in condition for allowance for the reasons discussed above. Thus, claim 7 should be patentable based at least on the arguments presented above.

Claims 18-19 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Stevens as applied to claim 17, and further in view of Adelstein et al. This contention is respectfully traversed.

Claims 18-19 depend from independent claim 17, which is in condition for allowance for the reasons discussed above. Thus, claims 18-19 should be patentable based at least on the

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arguments presented above. In addition, the proposed motivation to combine Adelstein with Stevens cannot be supported.

The Office suggests that it would have been obvious to combine Adelstein with Stevens because, “[p]aragraph [0048], Alderstein teaches by installing software on target device changes data stored in target device.” (See Office Action at page 13.) Initially, it should be noted that this statement by the Office of the teachings of Alderstein appears to contradict the Office’s own use of Alderstein since the Office is alleging that Alderstein teaches the claimed, “a detection agent being tangibly embodied in the machine-readable medium to run and dynamically load the kernel-mode software module without altering the storage device.” (Emphasis added.) In fact, the cited portion of Alderstein is actually referring to prioritizing the order of acquisition operations: “In accordance with one aspect of the invention, forensic device 12 may perform the acquisition operations in a particular order to reduce the impact the operations have on other data stored within target computing device 16, thereby maintaining the integrity of the data.” (See *e.g.*, Adelstein at ¶ 48.) Thus, this portion of Adelstein does not provide a motivation to modify Stevens to use a kernel-mode software module as claimed.

Moreover, Stevens actually teaches away from the proposed combination since Stevens’ focus is on the use of BIOS modules, rather than a kernel-mode software module. Stevens emphasizes the importance of the BIOS (system firmware) maintaining control of the host protected area, thereby maintaining the security of the protected (PARTIES) area 27. (See *e.g.*, Stevens at ¶ 83.) Thus, Stevens actually teaches away from the proposed combination.

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For all of the above reasons, a prima facie case of obviousness has not been established for either of claims 18 or 19.

Claims 1, 9-14, and 36 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Adelstein et al. and Stevens, with Assaf (US 6,728,830 B1), Moore (US 2004/0003135 A1), definition of Hardware Abstraction Layer (HAL) from <http://en.wikipedia.org> and Document from MSDN Library, and Debugging Terminology included as supporting documents. This contention is respectfully traversed.

For the reasons discussed above, neither Stevens nor Adelstein describe the subject matter of independent claim 1. Furthermore, a proper motivation to combine Stevens with Adelstein has not been established. The proposed motivation to combine is "to increase the speed of the system." (See Office Action at page 16.) However, no explanation is provided as to why or how combining Stevens with Adelstein would improve the speed of the system. Moreover, for the reasons addressed above in connection with claims 18 and 19, Stevens actually teaches away from the proposed combination with Adelstein. Thus, a prima facie case of obviousness has not been established for independent claim 1, and this claim should be in condition for allowance.

Dependent claims 9-11 should be patentable at least based on their dependence from claim 1. For example, claim 10 should be patentable for at least the additional reason that Stevens does not describe reconstructing a file system of a formerly protected storage area to

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derive information that is sent to a data processing system detection tool, as discussed above.

Thus, claim 10 should be patentable for at least this additional reason.

In addition, claim 11 recites, "wherein providing the information derived from the formerly protected storage area further comprises selecting the transport medium from a group including a peripheral device interface medium and a network communications medium."

(Emphasis added.) The Office contends that ¶s 43, 44, 53, and 54 of Adelstein teaches this subject matter, however, these portions of Adelstein merely describe different way for connecting the mobile forensic device 12 with the client device 14 and the target device 16, in various embodiments.

As illustrated in FIG. 1, client device 14, forensic device 12 and target computing device 16 are coupled to a common network, such as customer network 18. In this manner, customer network 18 acts as a communication link connecting forensic device 12 with target computing device 16. Customer network 18 may, for example, be a local area network for a specific site of an enterprise, or may span geographically distributed sites within the enterprise. [...]

FIG. 2 is a block diagram illustrating another exemplary computer forensic system 20 for retrieval and analysis of computer evidence in accordance with this disclosure. In this illustrated embodiment, computer forensic system 20 conforms substantially to computer forensic system 10 of FIG. 1, but user 15 connects to forensic device 12 via a public network 22, such as the Internet. [...]

FIG. 3 is a block diagram illustrating another exemplary computer forensic system 23 for retrieval and analysis of computer evidence in accordance with this disclosure. In this illustrated embodiment, computer forensic system 23 conforms substantially to computer forensic system 10 of FIG. 1, but user 15 connects directly to forensic device 12 instead of connecting to forensic device 12 via a

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network. In the example of FIG. 3, client device 14 may be configured to access forensic device 12 via a direct communication link, such as a phone line, a universal serial bus (USB), a wireless port, a serial port, a parallel port, an infrared (IR) link or any other type of direct connection.

(See e.g., Adelstein at ¶s 43, 53, and 54.)

Adelstein is clearly describing three alternative embodiments here: a first in which each of the devices 12, 14, and 16 connect to a customer network 18, a second in which a public network 22 is interposed between the client device 14 and the customer network 18, and a third in which the client device 14 connects directly to the forensic device 12. Regardless of whether the forensic device 12, the client device 14, or the combination of the two is equated with the presently claimed detection tool, Adelstein never suggests that an active selection can be made (after the system has been installed) between a peripheral device interface medium and a network communications medium for sending information to a data processing system detection tool. In all three embodiments shown in FIGs. 1-3 of Adelstein, information sent to the forensic device 12 from the target device 16 is sent over the customer network 18. Moreover, information exchange between the forensic device 12 and the client device 14 is accomplished using a direct communication link or a network, in alternative embodiments. There is no suggestion in Adelstein that a selection can be made between a direct communication link and a network in one single embodiment. Thus, claim 11 should be patentable for at least this additional reason.

Independent claim 12 recites, among other features, "removing the storage area protection of the storage device from within the running operating system and without rebooting the data processing system, thereby creating a formerly protected storage area; and providing

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information derived from the formerly protected storage area to a data processing system detection tool; wherein providing the information derived from the formerly protected storage area comprises sending the information over a transport medium to the data processing system detection tool; wherein providing the information derived from the formerly protected storage area further comprises selecting the transport medium from a group including a peripheral device interface medium and a network communications medium; and wherein sending the information over the transport medium comprises sending the information in packets having a packet structure useable over both the peripheral device interface medium and the network communications medium." (Emphasis added.)

For the reasons discussed above in connection with claim 11, Adelstein does not describe selecting a transport medium from a group including a peripheral device interface medium and a network communications medium. Furthermore, Adelstein does not describe sending the information in packets having a packet structure useable over both the peripheral device interface medium and the network communications medium. In fact, this later feature has not been adequately addressed by the Office.

The cited portion of Adelstein mentions acquiring Ethernet statistics and the use of various access methods, such as Windows Management Instrumentation (WMI), Server Message Block (SMB), and File Transfer Protocol (FTP), but does not describe use of a packet structure useable over both a peripheral device interface medium and a network communications medium.

Stevens does not cure these defects of Adelstein. Thus, independent claim 12 should be in

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condition for allowance for at least these reasons. Dependent claims 13 and 14 should be patentable based on the above arguments and the additional recitations they contain.

Independent claim 36 now recites, "means for directly accessing a protected area of a storage device in a data processing system live from a high level operating system without a reboot; and means for delivering information derived from the protected storage area to a data processing system detection tool; wherein the means for delivering comprises multi-transport means for delivering the information, including means for selectively communicating over a network communications medium or a peripheral device interface medium to support remote imaging and analysis of the directly accessed protected area." (Emphasis added.) Thus, independent claim 36 should be patentable for at least reasons similar to those discussed above with respect to claim 12.

Claims 15 and 16 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Adelstein et al. and Stevens as applied to claims 1 and 9-14, and further in view of Kinstler (US 2003/0107987 A1) and Joy et al. (US 2002/0093982 A1). This contention is respectfully traversed.

Claims 15 and 16 each depend from the allowable base claim 12. Neither Kinstler nor Joy cure the defects of Stevens and Adelstein. Thus, for at least the reasons discussed above in connection with claim 12, claims 15 and 16 should be in condition for allowance.

Moreover, the Office cites to ¶ 5 of Kinstler as allegedly teaching the presently claimed, "wherein the packet structure allows for only a one-to-one connection." However, Kinstler's

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description of a one-to-one connection here relates to network topology, not packet structure. Moreover, the rejection based on the proposed combination of Kinstler with Stevens and Adelstein represents improper hindsight reconstruction, since the Office has merely used the present claim as a template for piecing together unconnected references, and the proffered motivation to combine ("for faster data transfer") has no relation to the claimed subject matter, which is a security feature of the communications, not a data transfer accelerator. As described in the specification, "The packet structure can allow a strictly one-to-one connection to be specified to increase communications security (i.e., the server agent may be limited to communicating with only one client at a time)." (See Specification at ¶36.) Thus, claim 15 should be patentable for at least this additional reason.

Claims 25 and 31 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Adelstein et al. as applied to claim 24, and further in view of NIST (National Institute of Standards and Technology) Hard Disk Write Block Tool Specification. This contention is respectfully traversed.

Claims 25 and 31 each depend from allowable base claim 24. NIST fails to cure the deficiencies of Adelstein. Thus, for at least the reasons discussed above in connection with claim 24, claims 25 and 31 should be patentable.

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Claims 22, 23, 28, and 30:

The Office Action Summary page indicates that claims 22, 23, 28, and 30 are rejected, but these claims are not addressed in the body of the Office Action. These claims depend from allowable base claims for the reasons discussed above and are thus also patentable for at least this reason. In addition, to the extent that claims 22, 23, 28, and 30 stand rejected based on reasoning similar to what has been addressed above, these claims should be patentable based on similar reasoning to that presented above.

Conclusion

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific issue or comment does not signify agreement with or concession of that issue or comment. Because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

It is respectfully suggested for all of these reasons, that the current rejections are overcome, that none of the cited art teaches or suggests the features which are claimed, and therefore that all of these claims should be in condition for allowance. A formal notice of allowance is thus respectfully requested.

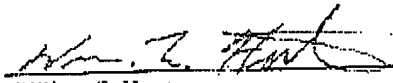
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Please apply the extra independent claim fee, and any other necessary charges or credits
to deposit account 06-1050.

Respectfully submitted.

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